23

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

Vanmali Dass Vs. Mahand Shyam Sundar Dass.

S.B.CIVIL MISC. APPEAL NO.123/1992
Against the order dated 3.2.92 passed in
Civil Misc. Case No.31/82.

Date of judgment : 14th May, 2007

PRESENT

HON'BLE MR.JUSTICE PRAKASH TATIA

Mr.Jagdish Vyas, for the appellant

BY THE COURT :

An application for grant of succession certificate was submitted by one Mahant Shyam Sunder Das under Section 372 of Indian Succession Act with respect to the amount of fixed deposit which was lying in the post office as well as in bank account of deceased Mahant Bhagwan Das. According to applicant, the applicant is Chela of one Ram Das. Sh. Ram Das had one more Chela Bhagwan Das and after the death of said saint Ram Das, he became successor to the property of the Ram Das. According to applicant, he was also in possession of the one Temple situated in

the village Phathenagar. According to applicant Shyam Sunder Das, the another Chela of deceased Ram Das shifted to Udaipur and he in addition to property received from Ram Das, earned his own personal property. It is said that Bhagwan Das died on 24.06.1981 on the way from Gangotri to Kadarnath. According to applicant Shyam Sundar Das, Bhagwan Das died intested and the applicant, Chela of the same Guru, is entitled to the self acquired property of deceased Bhagwan Das which are fixed deposits with the bank of Rajasthan Limited, Udaipur having No. 040594 dated 09.02.1981 obtained from Rs. 10,000/-, F.D. No. 040235 dated 02.03.1979 for Rs. 10,000/- in the same branch of Rajasthan Bank, FD No. 350475 in the Punjab National Bank, Udaipur dated 06.06.1978 for Rs. 7,000/-, FD No. 78745 in Hindustan Zink Limited dated 09.10.1980 for Rs. 7,000/-. In addition to above FD the deceased Bhagwan Das deposited the amount in the following accounts. Account No. 193464 in post office Bapubazar in saving account on 26.02.1981 having Rs. 221.55/- and in the same branch of post office in saving account No. 308839 dated 05.12.1979 Rs. 281/-, account No. 1029 FD in post office opened on 04.03.1981 Rs. 8,000/-, account No. 5537 saving bank account in Punjab National Bank dated 07.02.1981 for Rs. 1454.87/- account No. 1602 saving back account , bank of Rajasthan Limited, Ghantaghar dated 17.12.1981 Rs. 3268.30/- . Seven years National Saving Certificate in account No. 386765 and 335325 both dated 01.01.1987 Rs. 100/-

and Rs. 50/- in total Rs. 47375.72/-.

In the trial court Vanmali Das submitted that Bhagwan Das executed a will in favour of objector Vanmali Das , therefore, said Vanmali Das stated that he is entitled to the property of Bhagwan Das.

Learned District Judge, Udaipur vide order dated 03.02.1992 held that will is not proved and granted succession certificate in favour of the applicant Shyam Sundar Das. Being aggrieved against the order of the trial court dated 03.02.1992, the objector-appellant Vanmali Das preferred this appeal.

During pendency of this appeal appellant Vanmali Das died and one Smt. Suraj Bai on the basis of registered will dated 06.06. 2003 applied for being substituted as party appellant in place of Vanmali Das. The respondent applicant Shyam Sundar Das also died and one Hari Das stated that deceased Shyam Sundar Das executed a Will in his favour and got it registered on 30.11.1981. Hari Das prayed that he may be impleded as legal representatives of deceased Shyam Sundar Das. An inquiry was ordered under order 22 Rule 5 CPC and matter was sent to the trial court by the oder of this court dated 13.02.2006. The trial court decided the

issue of devolution of interest vide order dated 27.05.2006 and held that Smt. Suraj Bai is legal representative of the appellant Vanmali Das and Hari Das is a legal representative of respondent applicant Shyam Sundar Das. The finding of the trial court dated 27.05.2006 has not been challenged by any of the parties and, therefore, said finding was accepted by the court vide order dated 14.12.2006 and Smt. Suraj Bai is taken on record as legal representatives of appellant Vanmali Das and Hari Das was taken on record as legal representative of Shyam Sundar Das by the order of this court dated 14.12.2006.

On 11.05.2007 written compromise has been submitted by Smt. Suraj Bai and Hari Das and they compromised the matter which was duly attested by the Registrar (Administration) , Rajasthan High Court, Jodhpur in the presence of the learned advocates of the parties on 11.05.2007 itself. Both the parties prayed that in view of the compromise both the parties may be declared successors to the property referred above to the extent of having share of 40% to the Smt. Suraj Bai and 60% to the Hari Das.

In view of the above compromise duly verified, the order of trial court dated 03.02.1992 is required to be modified and it declared that Smt. Suraj Bai legal representative of deceased appellant Vanmali Das is entitled to 40% share in all money

mentioned above along with any interest and benefit accrued on said amount. The respondent Hari Das legal representative of deceased Shyam Sundar Das shall be entitled to 60% share in the amount mentioned above with all benefit accruing on the above amount as ultimate successor of Bhagwan Das to the extent of the 60% share. It is made clear that this succession certificate has been granted only with respect to the amount mentioned above only and not for any other property of deceased Bhagwan Das. The succession certificate be issued in accordance with law by the trial court as modified by this court by this order.

The appeal, therefore, is partly allowed in view of the compromise. Record be sent forthwith.

(PRAKASH TATIA),J.

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